

House Bill 646

By: Representatives Walker of the 107th, Oliver of the 83rd, and Benfield of the 85th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 10 of Title 30 of the Official Code of Georgia Annotated, relating to community trusts for handicapped persons, so as to provide for various revisions to prohibit discrimination regarding the use of community trusts based on the age of an impaired person; to revise legislative findings; to revise the definition of "impairment"; to provide for the treatment of contributions to a community trust by a beneficiary over the age of 65; to change certain provisions relating to documents establishing a community trust; to provide for a statutory approved form of community trust joinder agreement; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 10 of Title 30 of the Official Code of Georgia Annotated, relating to community trusts for handicapped persons, is amended by revising Code Section 30-10-1, relating to legislative findings, as follows:

"30-10-1.

The General Assembly finds and declares the following:

(1) It is an essential function of state government to provide basic support for persons with one or more mental or physical impairments that substantially limit one or more major life activities, whether the impairments are congenital or occur by reason of accident, injury, age, or disease;

(2) The cost of providing basic support for persons with mental or physical impairments is difficult for many citizens to afford, and they are forced to rely upon the government to provide that support;

(3) The families and friends of persons with mental or physical impairments desire to supplement, but not replace, the basic support provided by state government and other governmental programs;

(4) Medical, social, and other supplemental services are often provided by family members and friends of persons with mental or physical impairments for the lifetime of the impaired persons; ~~and~~

(5) It is necessary and desirable for the public health, safety, and welfare of the citizens of this state to encourage, enhance, and foster the ability of family members and friends of those individuals with mental or physical impairments to supplement, but not to replace, the basic support provided by state government and other governmental programs and to provide for medical, social, or other supplemental services for those persons with impairments; and

(6) In addressing the supplemental needs of persons with mental and physical impairments, and in construing this chapter, it is the policy of this state that there shall be no discrimination based on age, race, gender, religion, nationality, or any other factor."

SECTION 2.

Said chapter is further amended by revising paragraph (5) of Code Section 30-10-2, relating to definitions, as follows:

"(5) 'Impairment' means a mental or physical disability that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury, age, or disease, and where the impairment is verified by medical findings. Any finding that an individual is impaired shall be based on medical criteria, which shall include an inability to perform activities of daily living, and shall not be limited to persons who are under the age of 65."

SECTION 3.

Said chapter is further amended by revising Code Section 30-10-3, relating to donors, benefits, and assets, as follows:

"30-10-3.

(a) Donors may supplement the care, support, habilitation, rehabilitation, and treatment of persons with impairments pursuant to this chapter. Neither the contribution to a community trust for the benefit of a life beneficiary nor the use of community trust income or principal to provide benefits shall in any way reduce, impair, or diminish the benefits for which a person is otherwise eligible by law.

(b) A beneficiary who funds a community trust for his or her own benefit or who adds his or her own funds to a community trust after the age of 65 and who applies for medical assistance shall not be deemed to have made a transfer of assets for less than fair market value so long as the funds in the trust are used solely for the beneficiary to purchase items and services for the beneficiary at fair market value that supplement, but do not replace,

the basic support provided by state government and other governmental programs and to provide for medical, social, or other supplemental services. Contributions to a community trust by a beneficiary over the age of 65 that are inconsistent with this subsection shall not in any way reduce, impair, or diminish the benefits for which a person is otherwise eligible by law.

~~(b)~~(c) The assets held by the board of trustees of any community trust and its income and operations shall be exempt from all state and local taxation."

SECTION 4.

Said chapter is further amended by revising subsection (b) of Code Section 30-10-6, relating to qualification of trust, as follows:

"(b) The documents establishing a community trust shall include and be limited by the following:

(1) To be eligible to participate in a community trust, a life beneficiary must suffer from one or more impairments as defined in this chapter;

(2) A community trust may accept contributions from any source, so long as basic eligibility requirements are satisfied, to be held, administered, managed, invested, and distributed in order to facilitate the coordination and integration of private financing for individuals who have one or more impairments, while maintaining the eligibility of those individuals for government funding. All contributions and the earnings of a community trust shall be administered as one trust for purposes of investment and management of funds. Notwithstanding the administration as one trust for investment and management, one or more separate accounts shall be established for each designated life beneficiary. The net income earned after deducting administrative expenses shall be credited to the accounts of the life beneficiaries, in proportion to the amount of the contribution made for each life beneficiary to the total contributions made for all life beneficiaries;

(3) Every donor shall designate a specific person as the life beneficiary of the contribution made by the donor. In addition, each donor shall name a cotrustee and a successor or successors to the cotrustee to act with the trustees of the community trust on behalf of the designated life beneficiary. A life beneficiary or the spouse of a life beneficiary shall not be eligible to be a cotrustee or a successor cotrustee;

(4) If a donor designates himself or herself or his or her spouse as the life beneficiary, then the account of the life beneficiary shall, regardless of any other provision of this chapter, meet the following additional conditions:

(A) The contribution or contributions of the life beneficiary or his or her spouse to the community trust shall be irrevocable;

~~(B) The funds remaining in the life beneficiary's account upon the death of the life beneficiary shall, to the extent such funds result from contributions made by the life beneficiary or his or her spouse, be subject to the state reimbursement requirements of federal laws governing community trusts, including paragraph (4) of subsection (d) of 42 U.S.C. Section 1396p as applied by this state. Any funds remaining after satisfaction of such requirements shall be distributed as the donor has designated in writing, and if there is no such designation or should distribution to those designated by the donor be impossible, then to a successor trust~~ To the extent that amounts remaining in the beneficiary's community trust upon the death of the beneficiary are not retained by the community trust for charitable purposes, the community trust shall pay to the state from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the state plan. If more than one state has provided medical assistance on behalf of the beneficiary, then the trust shall pay the states on a prorated basis. Any funds remaining after satisfaction of such requirements shall be distributed as the donor has designated in writing, and if there is no such designation or should such distribution to those designated by the donor be impossible, then to a successor trust; and

(C) Neither the donor nor the donor's spouse shall serve as cotrustee;

(5) During his or her lifetime, any donor who has not designated himself or herself or his or her spouse as the life beneficiary may revoke any contribution made to a community trust. Notwithstanding the first sentence of this paragraph, any donor may, at any time, voluntarily waive the right to revoke. Upon revocation, an amount equal to the current fair market value of the balance of the life beneficiary's account in the community trust as determined on the date of revocation shall be returned to the donor;

(6) The cotrustee and the trustees annually, or more frequently, shall agree on the amount of income or principal, or both, to be used to provide noncash benefits and the nature and type of benefits to be provided to the life beneficiary. Such permissible benefits shall include, but not be limited to: more sophisticated dental, medical, and diagnostic work or treatment than is otherwise available from public assistance; private rehabilitative training; supplementary educational aid; entertainment; periodic vacations and outings; expenditures to foster the interests, talents, and hobbies of the life beneficiary; and expenditures to purchase personal property and services which will make life more comfortable and enjoyable for the life beneficiary but which will not defeat the life beneficiary's eligibility for public assistance. Expenditures may include payment of the funeral and burial costs of the life beneficiary. The trustees and cotrustee may exercise discretion to make payments from time to time for a person to accompany the life beneficiary on vacations and outings and for the transportation of the life beneficiary or

1 of friends and relatives of the life beneficiary to visit the life beneficiary. Expenditures
2 shall not be made for the primary support or maintenance of the life beneficiary,
3 including basic food, shelter, and clothing if, as a result, the life beneficiary would no
4 longer be eligible to receive public benefits or assistance for which the life beneficiary
5 would otherwise be eligible. Any net income which is not used shall be added annually
6 to the principal;

7 (7) Any cotrustee may, for good and sufficient reason upon written notice to the trustees
8 and a determination by the board of trustees that the reason for the transfer is good and
9 sufficient or upon the issuance of a notice of termination by the board of trustees, transfer
10 all of the current fair market value of the balance of the life beneficiary's account in the
11 trust as determined on the date of transfer to another trustee to be held for the sole benefit
12 of the life beneficiary during his or her life; provided, however, that if such a transfer
13 involves funds contributed by the life beneficiary or his or her spouse, any trustee to
14 whom funds are so transferred shall acknowledge in writing the right of the state to
15 reimbursement as provided in 42 U.S.C. Section 1396p(d)(4). In no event shall a
16 cotrustee be entitled to transfer only a portion of the current fair market value of the life
17 beneficiary's account in the trust;

18 (8) If a life beneficiary for whose benefit a contribution has been made to the trust ceases
19 to be eligible to participate in the trust, and neither the donor nor the cotrustee revokes
20 or withdraws the contribution, then the board of trustees may, by written notice to the
21 donor or cotrustee, terminate the trust as to such life beneficiary. Upon termination, the
22 board of trustees shall distribute the fair market value of such life beneficiary's account
23 in the trust to the person or persons the donor has designated; provided, however, that if
24 the donor has failed to designate a person or persons for distribution in this event or if a
25 distribution to the designated person or persons is impossible, the board of trustees shall
26 distribute the fair market value of such life beneficiary's account in the trust to the trustee
27 of the successor trust to be held, administered, and distributed by the successor trustee in
28 accordance with the successor trust described in paragraph (10) of this subsection;

29 ~~(9) Upon the death of the life beneficiary, then an amount equal to the current fair market~~
30 ~~value of the balance of the life beneficiary's account in the trust, as determined on the~~
31 ~~date of death, less payment of funeral and burial costs of the life beneficiary and~~
32 ~~satisfaction of any lien as provided in paragraph (4) of this subsection, shall be distributed~~
33 ~~to the person or persons the donor has designated; provided, however, that if the donor~~
34 ~~has failed to designate a person or persons for distribution in this event or if a distribution~~
35 ~~to the designated person or persons is impossible, the board of trustees shall distribute the~~
36 ~~fair market value of such life beneficiary's account to a successor trust. To the extent this~~
37 ~~provision must be modified for the life beneficiary to remain eligible for government~~

1 ~~benefits, such modifications shall be made~~ Upon the death of the life beneficiary, then to
2 the extent that amounts remaining in the beneficiary's community trust are not retained
3 by the community trust for charitable purposes, an amount equal to the current fair
4 market value of the balance of the life beneficiary's account in the trust, as determined
5 on the date of the death, less payment of funeral and burial costs of the life beneficiary
6 and satisfaction of any lien as provided in paragraph (4) of this subsection, shall be
7 distributed to the person or persons the donor has designated; provided, however, that if
8 the donor has failed to designate a person or persons for distribution in this event or if a
9 distribution to the designated person or persons is impossible, the board of trustees shall
10 distribute the fair market value of such life beneficiary's account to a successor trust. To
11 the extent this provision must be modified for the life beneficiary to remain eligible for
12 government benefits, such modifications shall be made; and

13 (10) The trustee of the successor trust shall hold, administer, and distribute the principal
14 and income of the successor trust, in the discretion of the trustee, for the maintenance,
15 support, health, education, and general well-being of indigent persons suffering from one
16 or more impairments, recognizing that it is the purpose of the successor trust to
17 supplement, not replace, any government benefits for the beneficiary's or beneficiaries'
18 basic support for which the beneficiary or beneficiaries may be eligible and to improve
19 the quality of the beneficiary's or beneficiaries' life by providing him, her, or them with
20 those amenities which cannot otherwise be provided by public assistance or other
21 available sources. Permissible expenditures include, but are not limited to: more
22 sophisticated dental, medical, and diagnostic work or treatment than is otherwise
23 available from public assistance; private rehabilitative training; supplementary
24 educational aid; entertainment; periodic vacations and outings; expenditures to foster the
25 interests, talents, and hobbies of the beneficiary or beneficiaries; and expenditures to
26 purchase personal property and services which will make life more comfortable and
27 enjoyable for the beneficiary or beneficiaries but which will not defeat his, her, or their
28 eligibility for public assistance. Expenditures may include payment of the funeral and
29 burial costs of the beneficiary or beneficiaries. The trustee of the successor trust, in his
30 or her discretion, may make payments from time to time for a person to accompany a
31 beneficiary on vacations and outings and for the transportation of a beneficiary or of
32 friends or relatives of a beneficiary to visit a beneficiary. Any undistributed income of
33 the successor trust shall be added to the principal from time to time. Expenditures shall
34 not be made for the primary support or maintenance of a beneficiary, including basic
35 food, shelter, and clothing, if, as a result, a beneficiary would no longer be eligible to
36 receive public benefits or assistance for which such beneficiary would otherwise be
37 eligible."

SECTION 5.

Said chapter is further amended by adding a new Code section to read as follows:

"30-10-10.

A joinder agreement in substantial compliance with this approved form shall be deemed to be in compliance with this Act.

'Joinder Agreement

[COMMUNITY TRUST NAME]

A. Joinder of Community Trust:

The undersigned enrolls in the [COMMUNITY TRUST NAME] ("the Trust") and agrees to the terms of the Declaration of Trust dated [DATE] (as may be amended from time to time). [COMMUNITY TRUST NAME] Inc., a Georgia nonprofit corporation, is Trustee. The transfer of Grantor's funds to the account established by the Trust for the Beneficiary shall be irrevocable.

This Trust is a pooled Community Trust, governed by the laws and regulations of Georgia and the United States, in conformity with the provisions of 42 U.S.C. Section 1396p(d)(4)(C). To the extent there is conflict between the terms of this Trust and the governing law, the law and regulations shall control.

B. Grantor/Beneficiary: The Grantor/Beneficiary is _____.

C. Beneficiary's Representative: Conservators, Guardian, or Attorney-in-Fact:

1. Name: _____

2. Address: _____

3. Phone/e-mail: _____

E. Amount to Be Transferred to Trust (the "Trust Funds"): \$[AMOUNT].

F. Distributions to Beneficiary:

Distributions of the Trust Funds will be made for the Beneficiary in Trustee's discretion pursuant to the terms of the Trust and only in a manner that will not cause problems as to the eligibility of the Beneficiary for public assistance programs (such as SSI and Medicaid).

G. Distributions of the Remainder upon the Beneficiary's Death:

Upon the death of the Grantor/Beneficiary, federal law at 42 U.S.C. Section 1396p(D)(4)(c) requires that any assets remaining in a Trust Subaccount at the death of the Beneficiary are subject to a State Reimbursement Claim by the State for any Medicaid benefits made on the Beneficiary's behalf to the extent that Trust Funds are not retained by the Community Trust. Unless the Trust Funds are retained by the Trust, after payment of permitted trust administrative expenses and taxes, a State Reimbursement Claim shall have first priority.

If the Community Trust does not retain Trust Funds and there is no State Reimbursement Claim or if that claim has been satisfied, upon the death of the Grantor/Beneficiary, distribution of the Trust Funds shall be made to the following:

To Beneficiary's children in equal shares, by right of representation;

OR

Percentage of

Trust Estate to

be Distributed Name of Distributee

% _____

% _____

% _____

% _____

H. Fees and Expenses:

Grantor agrees to pay the fees set out in Schedule A that is attached and that may be amended from time to time. If fees are not paid in advance by Grantor, the Trustee is authorized to charge such fees to a Beneficiary's Subaccount. Fees are not refundable.

I. Acknowledgment by Grantor:

Grantor recognizes and acknowledges the uncertainty and changing nature of the guidelines, laws, and regulations pertaining to governmental benefits, and Grantor agrees that the Trustee will not in any event be liable for any loss of benefits as long as the Trustee acts in good faith.

Grantor agrees that the Trustee and its agents and employees, as well as their agents' and employees' heirs and legal and personal representatives, shall not in any event be liable to any Grantor or Beneficiary or any other party for its acts as Trustee so long as the Trustee acts reasonably and in good faith.

Grantor acknowledges that upon execution of the Joinder Agreement by Grantor and the Trustee and the funding of a Subaccount for a Beneficiary, that this Trust, as to the

Grantor and the Beneficiary, is irrevocable. Grantor acknowledges that after the funding of a Subaccount, Grantor shall have no further interest in and does thereby relinquish and release all rights in, control over, and all incidents of interest of any kind or nature in and to the contributed assets and all income thereon.

J. Federal Taxes:

Grantor acknowledges that a trust Subaccount may be treated as a grantor trust for federal income tax purposes as provided under Section 671 et. seq. of the Internal Revenue Code and the U. S. Treasury income tax regulations under that section. In such event, all allocable income, gains, or losses shall be reported on the Grantor's federal income tax return and taxable to the Grantor.

Grantor
[COMMUNITY TRUST, Inc.], as Trustee

By: _____

Title: _____

Acknowledgment by Trustee

State of Georgia

County of [COUNTY]

On [DATE], personally appeared before me, [TRUST OFFICIAL], who acknowledged he or she is the President of the maker, [COMMUNITY TRUST], Inc., and is authorized by the maker to execute this instrument on behalf of the maker.

Notary Public

My commission expires: _____

Acknowledgment by Grantor

State of Georgia

County of [COUNTY]

On [DATE] personally appeared before me, [GRANTOR], Grantor, with whom I am personally acquainted or who proved to me on satisfactory evidence to be the person who executed the foregoing instrument, and who acknowledged that he or she executed the same as his or her free act and deed.

Notary Public

My commission expires:_____

Acknowledgment by Grantor's Attorney-in-Fact

State of Georgia

County of [COUNTY]

On [DATE], personally appeared before me, [ATTORNEY IN FACT], with whom I am personally acquainted or who proved to me on satisfactory evidence to be the person who executed the foregoing instrument as attorney-in-fact for [GRANTOR], Grantor, and who acknowledged that as attorney-in-fact he or she executed the same as the free act and deed of Grantor.

Notary Public

My commission expires:_____

Acknowledgment by Grantor's Conservator

State of Georgia

County of [COUNTY]

On [DATE], personally appeared before me, [CONSERVATOR], with whom I am personally acquainted or who proved to me on satisfactory evidence to be the person who executed the foregoing instrument as Conservator for [GRANTOR], Grantor, and who acknowledged that as Conservator he or she executed the same as the free act and deed of Grantor.

Notary Public

My commission expires: _____

Schedule A

Fee Structure and Trust Guidelines

Minimum Trust Size: \$[AMOUNT]. No maximum amount.

Fees:

Set up Fee:

\$ [FEE AMOUNT] at time of creation of the Subaccount and transfer of funds to the Trust.

Annual Fee:

Minimum of \$ [FEE AMOUNT]; or 1.5 percent of the trust corpus on the anniversary date of the transfer of the funds to the Trust.

Not included in the fees above are professional fees charged to the Trust or the Beneficiary's Subaccount or that should be shared among all Trust Subaccounts for services rendered to the Trustee by professionals (attorneys, accountants, and the like). The Annual Fee charged to the Subaccount is intended to cover administrative expenses, overhead, salaries, and other expenses that are reasonable and necessary to provide professional management and operation of the Trust.

The Trust is nonprofit, but it must generate a sufficient amount of income from the Subaccounts in order to discharge its fiduciary obligations owed to the Trust beneficiaries. The Trustee expects that fees will be adjusted periodically (up or down) to make sure that the principal goal of meeting beneficiaries' needs is met.'

SECTION 6.

This Act shall become effective on January 1, 2007.

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.